

the provisions of section 348 of this title, whenever any male and female Indian shall have cohabited together as husband and wife according to the custom and manner of Indian life the issue of such cohabitation shall be, for the purpose aforesaid, taken and deemed to be the legitimate issue of the Indians so living together, and every Indian child, otherwise illegitimate, shall for such purpose be taken and deemed to be the legitimate issue of the father of such child: *Provided*, That the provisions of this Act shall not be held or construed as to apply to the lands commonly called and known as the "Cherokee Outlet."

(Feb. 28, 1891, ch. 383, § 5, 26 Stat. 795.)

#### REFERENCES IN TEXT

This Act, referred to in text, is act Feb. 28, 1891, ch. 383, 26 Stat. 794, as amended, which enacted sections 336, 371, and 397 of this title and amended section 331 of this title. For complete classification of this Act to the Code, see Tables.

#### CODIFICATION

A further provision of section 5 of act Feb. 28, 1891, "that no allotment of lands shall be made or annuities of money paid to any of the Sac and Fox of the Missouri Indians who were not enrolled as members of said tribe on January first, eighteen hundred and ninety; but this shall not be held to impair or otherwise affect the rights or equities of any person whose claim to membership in said tribe is now pending and being investigated," was repealed by a provision of the Indian Appropriation Act of Mar. 2, 1895, ch. 188, § 1, 28 Stat. 902.

#### CROSS REFERENCES

Determination of heirship of deceased members of Five Civilized Tribes, see section 375 of this title.

### § 372. Ascertainment of heirs of deceased allottees; settlement of estates; sale of lands; deposit of Indian moneys

When any Indian to whom an allotment of land has been made, or may hereafter be made, dies before the expiration of the trust period and before the issuance of a fee simple patent, without having made a will disposing of said allotment as hereinafter provided, the Secretary of the Interior, upon notice and hearing, under such rules as he may prescribe, shall ascertain the legal heirs of such decedent, and his decisions shall be subject to judicial review to the same extent as determinations rendered under section 373 of this title. If the Secretary of the Interior decides the heir or heirs of such decedent competent to manage their own affairs, he shall issue to such heir or heirs a patent in fee for the allotment of such decedent; if he shall decide one or more of the heirs to be incompetent, he may, in his discretion, cause such lands to be sold: *Provided*, That if the Secretary of the Interior shall find that the lands of the decedent are capable of partition to the advantage of the heirs, he may cause the shares of such as are competent, upon their petition, to be set aside and patents in fee to be issued to them therefor. All sales of lands allotted to Indians authorized by this or any other Act shall be made under such rules and regulations and upon such terms as the Secretary of the Interior may prescribe, and he shall require a deposit of 10 per

centum of the purchase price at the time of the sale. Should the purchaser fail to comply with the terms of sale prescribed by the Secretary of the Interior, the amount so paid shall be forfeited; in case the balance of the purchase price is to be paid on such deferred payments, all payments made, together with all interest paid on such deferred installments, shall be so forfeited for failure to comply with the terms of the sale. All forfeitures shall inure to the benefit of the allottee or his heirs. Upon payment of the purchase price in full, the Secretary of the Interior shall cause to be issued to the purchaser patent in fee for such land: *Provided*, That the proceeds of the sale of inherited lands shall be paid to such heir or heirs as may be competent and held in trust subject to use and expenditure during the trust period for such heir or heirs as may be incompetent as their respective interests shall appear: *Provided further*, That the Secretary of the Interior is authorized, in his discretion, to issue a certificate of competency, upon application therefor, to any Indian, or in case of his death to his heirs, to whom a patent in fee containing restrictions on alienation has been or may hereafter be issued, and such certificate shall have the effect of removing the restrictions on alienation contained in such patent: *Provided further*, That any United States Indian agent, superintendent, or other disbursing agent of the Indian Service may deposit Indian moneys, individual or tribal, coming into his hands as custodian, in such bank or banks as he may select: *Provided*, That the bank or banks so selected by him shall first execute to the said disbursing agent a bond, with approved surety, in such amount as will properly safeguard the funds to be deposited. Such bonds shall be subject to the approval of the Secretary of the Interior.

(June 25, 1910, ch. 431, § 1, 36 Stat. 855; Mar. 3, 1928, ch. 122, 45 Stat. 161; Apr. 30, 1934, ch. 169, 48 Stat. 647; May 24, 1990, Pub. L. 101-301, § 12(c), 104 Stat. 211.)

#### REFERENCES IN TEXT

This Act, referred to in text, is act June 25, 1910, ch. 431, 36 Stat. 855, as amended, which enacted sections 47, 93, 151, 202, 337, 344a, 351, 352, 353, 372, 403, 406, 407, and 408 of this title, sections 6a-1 and 16a of Title 41, Public Contracts, and section 148 of Title 43, Public Lands, and amended sections 191, 312, 331, 333, and 336 of this title and sections 104 and 107 of former Title 18, Criminal Code and Criminal Procedure. Sections 104 and 107 of former title 18 were repealed and reenacted as sections 1853 and 1856 of Title 18, Crimes and Criminal Procedure, by act June 25, 1948, ch. 645, 62 Stat. 683. For complete classification of this Act to the Code, see Tables.

#### AMENDMENTS

1990—Pub. L. 101-301 substituted "his decisions shall be subject to judicial review to the same extent as determinations rendered under section 373 of this title" for "his decision thereon shall be final and conclusive".

1934—Act Apr. 30, 1934, substituted ", all payments made, together with all interest paid on such deferred installments, shall be so forfeited" for "a further amount, not exceeding 15 per centum of the purchase price together with all interest paid on such deferred installments may be so forfeited", inserted "allottee or his" in sentence beginning "All forfeitures shall inure" and struck out "hereafter" from last proviso.

1928—Act Mar. 3, 1928, inserted in introductory text "or may hereafter be made," after "has been made,".

“together with all interest paid on such deferred installments” after “purchase price”, “or may hereafter be” after “restrictions on alienation has been”, and “hereafter” in last proviso, and substituted “by this or any other Act” for “by any Act”.

#### CROSS REFERENCES

Deposits in banks, see section 151 of this title.

Indian agents abolished, see note under section 64 of this title.

Klamath Tribe, heirs and devisees of restricted or trust property, see section 556 of this title.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 351, 353, 373, 374, 406, 564h, 697, 747, 2207 of this title; title 43 section 1617.

### § 372-1. Repealed. Pub. L. 101-301, § 12(a), May 24, 1990, 104 Stat. 211

Section, Pub. L. 90-28, title I, June 24, 1967, 81 Stat. 69, provided that, on and after June 24, 1967, hearing officers appointed for Indian probate work did not have to be appointed pursuant to the Administrative Procedure Act, as amended. Similar provisions were contained in the following prior appropriation acts:

May 31, 1966, Pub. L. 89-435, title I, 80 Stat. 181.  
 June 28, 1965, Pub. L. 89-52, title I, 79 Stat. 185.  
 July 7, 1964, Pub. L. 88-356, title I, 78 Stat. 284.  
 July 26, 1963, Pub. L. 88-79, title I, 77 Stat. 107.  
 Aug. 9, 1962, Pub. L. 87-578, title I, 76 Stat. 345.  
 Aug. 3, 1961, Pub. L. 87-122, title I, 75 Stat. 256.  
 May 13, 1960, Pub. L. 86-455, title I, 74 Stat. 104.  
 June 23, 1959, Pub. L. 86-60, title I, 73 Stat. 92.  
 June 4, 1958, Pub. L. 85-439, title I, 72 Stat. 155.  
 July 1, 1957, Pub. L. 85-77, title I, 71 Stat. 257.  
 June 13, 1956, ch. 380, title I, 70 Stat. 257.  
 June 16, 1955, ch. 147, title I, 69 Stat. 141.  
 Aug. 26, 1954, ch. 935, Ch. VII, 68 Stat. 813.

#### SAVINGS PROVISION

Section 12(b) of Pub. L. 101-301 provided that: “Hearing officers heretofore appointed to preside over Indian probate proceedings pursuant to the proviso repealed by subsection (a) [25 U.S.C. 372-1], having met the qualifications required for appointment pursuant to section 3105 of title 5, United States Code, shall be deemed to have been appointed pursuant to that section.”

### § 372a. Heirs by adoption

In probate matters under the exclusive jurisdiction of the Secretary of the Interior, no person shall be recognized as an heir of a deceased Indian by virtue of an adoption—

(1) Unless such adoption shall have been—

(a) by a judgment or decree of a State court;

(b) by a judgment or decree of an Indian court;

(c) by a written adoption approved by the superintendent of the agency having jurisdiction over the tribe of which either the adopted child or the adoptive parent is a member, and duly recorded in a book kept by the superintendent for that purpose; or

(d) by an adoption in accordance with a procedure established by the tribal authority, recognized by the Department of the Interior, of the tribe either of the adopted child or the adoptive parent, and duly recorded in a book kept by the tribe for that purpose; or

(2) Unless such adoption shall have been recognized by the Department of the Interior

prior to the effective date of this section or in the distribution of the estate of an Indian who has died prior to that date: *Provided*, That an adoption by Indian custom made prior to the effective date of this section may be made valid by recordation with the superintendent if both the adopted child and the adoptive parent are still living, if the adoptive parent requests that the adoption be recorded, and if the adopted child is an adult and makes such a request or the superintendent on behalf of a minor child approves of the recordation.

This section shall not apply with respect to the distribution of the estates of Indians of the Five Civilized Tribes or the Osage Tribe in the State of Oklahoma, or with respect to the distribution of estates of Indians who have died prior to the effective date of this section.

(July 8, 1940, ch. 555, §§ 1, 2, 54 Stat. 746.)

#### REFERENCES IN TEXT

For effective date of this section, referred to in text, see Effective Date note set out below.

#### CODIFICATION

First and second paragraphs of this section are from sections 1 and 2, respectively, of act July 8, 1940.

#### EFFECTIVE DATE

Section 3 of act July 8, 1940, provided that: “This Act shall become effective six months after the date of its approval [July 8, 1940].”

#### TRANSFER OF FUNCTIONS

For transfer of functions of other officers, employees, and agencies of Department of the Interior, with certain exceptions, to Secretary of the Interior, with power to delegate, see Reorg. Plan No. 3 of 1950, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3174, 64 Stat. 1262, set out in the Appendix to Title 5, Government Organization and Employees.

### § 373. Disposal by will of allotments held under trust

Any persons of the age of eighteen years or older having any right, title, or interest in any allotment held under trust or other patent containing restrictions on alienation or individual Indian moneys or other property held in trust by the United States shall have the right prior to the expiration of the trust or restrictive period, and before the issuance of a fee simple patent or the removal of restrictions, to dispose of such property by will, in accordance with regulations to be prescribed by the Secretary of the Interior: *Provided, however*, That no will so executed shall be valid or have any force or effect unless and until it shall have been approved by the Secretary of the Interior: *Provided further*, That the Secretary of the Interior may approve or disapprove the will either before or after the death of the testator, and in case where a will has been approved and it is subsequently discovered that there has been fraud in connection with the execution or procurement of the will the Secretary of the Interior is authorized within one year after the death of the testator to cancel the approval of the will, and the property of the testator shall thereupon descend or be distributed in accordance with the laws of the State where in the property is located: *Provided further*, That